

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

OCT 31 1995

Ex parte LLOYD S. VASILAKES
and ADELIO LISSONI

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 94-0403
Application 07/611,997¹

ON BRIEF

Before JOHN SMITH, GARRIS and OWENS, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 12 and 32 through 44. The only other claims in

¹ Application for patent filed November 9, 1990.

Appeal No. 94-0403
Application 07/611,997

the application, which are claims 13 through 31, stand withdrawn from further consideration by the examiner.

The subject matter on appeal relates to a tape applying machine having a carriage, a lower taping head disposed within the carriage, a bridge structure attached to and disposed above the carriage, and an upper taping head positioned within a mounting assembly of the bridge structure. The machine is characterized by certain features including an upper-taping-head mounting means having J-configured slots for receiving pin members extending outwardly from the upper taping head, a tape supply roll holder having a bracket portion and an arm portion so arranged that the supply roll is disposed at a position away from and not underneath the carriage, a mechanical stop within the bridge for retaining it in a raised position when the pneumatic circuit of the bridge is in a nonoperable state, an emergency stop switch means positioned on an upper surface of the bridge structure, and first and second compression roller means each of which includes first and second spaced apart rollers for engaging opposite sides on the upper portion of the box to be taped. These features are

Appeal No. 94-0403
Application 07/611,997

further defined by independent claims 7, 32, 36, 39 and 41.² A copy of these independent claims, taken from the main brief, is appended to this decision.

The following prior art is relied upon by the examiner as evidence of obviousness:

Werner	2,841,305	July 1, 1958
Warshaw et al. (Warshaw)	4,061,526	Dec. 6, 1977
Ulrich et al. (Ulrich)	4,392,911	July 12, 1983
Chiu	4,732,644	Mar. 22, 1988
Ooms et al. (Ooms) (European patent)	0 005 888	Dec. 12, 1979
Burov et al. (Burov) (Russian patent)	1,245,507	July 23, 1986
3M-Matic 22A Adjustable Case Sealer		Admitted prior art
3M-Matic 77A Adjustable Case Sealer		Admitted prior art
3M-Matic 77R Random Case Sealer		Admitted prior art

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

(1) Claims 1 through 12 are rejected as obviousness over the admitted prior art taken with Warshaw;

² As correctly noted by the examiner on page 2 of the answer, the phrase "each compression roller means including first and second spaced apart," in the last clause of claim 41 is incomplete and should read --each compression roller means including first and second spaced apart rollers,--. For purposes of rendering a decision on this appeal, we have treated claim 41 as though it read in the aforementioned manner. However, in any further prosecution that may occur, the appellants should rectify the minor informality created by this incomplete claim phrase.

Appeal No. 94-0403
Application 07/611,997

(2) Claims 32 through 35 stand rejected as obvious over the admitted prior art in view of Burov;

(3) Claims 36 through 38 stand rejected as obvious over the admitted prior art in view of Werner, Chiu and Ulrich;

(4) Claims 39 and 40 stand rejected as obvious over the admitted prior art in view of common knowledge in the art; and

(5) Claims 41 through 44 stand rejected as obvious over the admitted prior art in view of Ooms.

Rather than reiterate the respective positions advocated by the appellants and the examiner concerning the above-noted rejections, we refer to the main and reply briefs and to the final Office action and answer for a complete exposition thereof.

Preliminarily, we observe that the dependent claims have not been argued separately from their parent claims. Accordingly, these dependent claims will stand or fall with independent claims 1, 7, 32, 36, 39 and 41. See *In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987) and 37 CFR § 1.192(c)(5)(6).

Our study of the record on appeal leads us to conclude that the above-listed rejections (3), (4) and (5) should be sustained but that rejections (1) and (2) cannot be sustained. Our reasons are set forth below.

Concerning rejection (1) above, we agree with the appellants that the combined teachings of the admitted prior art and Warshaw

would not have suggested a mounting arrangement having J-configured slots engageable with taping head pin members as defined by independent claims 1 and 7. The mounting arrangement of the admitted prior art employs screws. While the mounting arrangement of Warshaw employs slots and pins, patentee's arrangement does not include a pair of spaced apart J-configured slots on first and second spaced apart panels of a mounting means in association with taping head pin members which engage the J-configured slots. It follows that the admitted prior art in combination with Warshaw would not have led to a slot/pin mounting arrangement of the type claimed by the appellants. The only suggestion for this latter arrangement stems from impermissible hindsight gleaned by reviewing the appellants' own disclosure.

Under these circumstances, we cannot sustain the § 103 rejection of claims 1 through 12 as being obvious over the admitted prior art in view of Warshaw.

For analogous reasons, we also cannot sustain the § 103 rejection of claims 32 through 35 as being obvious over the admitted prior art in view of Burov. More specifically, neither the admitted prior art nor Burov discloses a tape supply roll holder having a bracket portion and an arm portion so arranged that a supply roll on the distal end of the arm portion is not

underneath the carriage as required by independent claim 32. Instead, as the examiner seems to appreciate (e.g., see page 6 of the answer), the supply roll is quite plainly underneath the carriage of Burov as well as the admitted prior art. In essence, therefore, the rejection under consideration cannot be sustained because the prior art evidence supplied therein simply does not support the examiner's obviousness conclusion.

With respect to the rejection of claims 36 through 38, the appellants argue that Werner, Chiu and Ulrich contain no teaching or suggestion of a pneumatic circuit in combination with a mechanical stop for retaining the bridge in a raised position when the pneumatic circuit is in a nonoperable state. We do not agree. Werner, for example, discloses a mechanical stop in the form of locking bolts 34 in combination with screw-type vertical-position adjusting means. From our perspective, one having ordinary skill in this art would have provided the tape applying machine of the admitted prior art, which includes a pneumatic circuit as claimed by the appellants, with a mechanical stop of the type taught by Werner in order to retain the bridge in a raised position when the pneumatic circuit is in a nonoperable state as required by independent claim 36. This provision would have been motivated by the need to satisfy the recent OSHA

regulations (referred to by the appellants on page 25 of the subject specification and on pages 11 and 12 of the main brief) which require that no stored energy can be left in a machine when it is shut off.

For the above stated reasons, we will sustain the § 103 rejection of claims 36 through 38 as being obvious over the admitted prior art in view of Werner, Chiu and Ulrich.

As for the rejection of claims 39 and 40, the appellants argue that, "[s]ince the Examiner failed to produce a reference which teaches that locating the stop switch on an upper surface of the bridge carrying an upper taping head is a location where the stop switch can be most likely used, a prima facie case of obviousness has not been established" (main brief, page 13). We find this argument unpersuasive. According to the examiner "[i]t is common knowledge in any art to locate emergency stop switches where they are most readily available for use" (final Office action, page 5). The examiner's position on this matter, which is logical and reasonable on its face, has not been specifically contested by the appellants. We shall, therefore, accept the examiner's position regarding "common knowledge" as correct.³

³ Indeed, it is inconceivable to us that an emergency stop switch would be placed at a location where it is not readily available for use.

In light of this "common knowledge", we fully share the examiner's conclusion that "[i]t would have been obvious to one of ordinary skill to adopt an emergency switch on the upper surface of the bridge since this location can be reached from either side of the taping machine" (final Office action, page 5). Concerning this matter, the appellants state:

The advantages of providing an emergency stop in a location accessible from any side of the machine is [sic, are] apparent. Since an operator may move from side to side while overseeing the operation of the machine, providing a stop at the top of the machine would allow the operator cease its operation, even if not in a location accessible to a side emergency stop button. [main brief, page 13]

We agree with these statements and consider them to militate for, rather than against, the examiner's rejection. That is, an artisan with ordinary skill would have disposed the emergency stop switch of the admitted prior art tape applying machine on an upper surface of the bridge structure so that it would be actuatable from either side of the machine as proposed by the examiner in order to obtain the aforementioned apparent advantages of disposing a stop switch means at such a location. It follows that we will sustain the § 103 rejection of claims 39 and 40 as being obvious over the admitted prior art in view of common knowledge in the art.

Appeal No. 94-0403
Application 07/611,997

In assessing the rejection of claims 41 through 44, we observe that the tape applying machine of the admitted prior art includes only one compression roller for each side of the machine whereas the rejected claims require two compression rollers for each side. In the examiner's opinion, it would have been obvious to provide the admitted prior art machine with an additional roller per side in view of Ooms. It is the appellants' viewpoint that the Ooms reference would not have suggested such a provision because the plates and closing members thereof serve a folding purpose which is different from the alignment purpose served by the here claimed rollers. However, the inquiry under § 103 should not be limited to the specific structure shown by a reference but should be into the concepts fairly contained therein. *In re Bascom*, 230 F.2d 612, 109 USPQ 98 (CCPA 1956). As explained by the examiner on page 11 of the answer, Ooms shows that the concept of using a line of pressure, as opposed to a single point of pressure, was known in the prior art. Particularly in light of this prior art concept, we share the examiner's conclusion that it would have been obvious for an ordinarily skilled artisan to provide the admitted prior art machine with an additional compression roller per side to thereby additionally insure achievement of the alignment purpose served by such

Appeal No. 94-0403
Application 07/611,997




rollers. See, for example, *St. Regis Paper Co. v. Bemis Co., Inc.*, 549 F.2d 833, 838, 193 USPQ 8, 11 (7th Cir. 1977).

The foregoing circumstances lead us to conclude that we should sustain the § 103 rejection of claims 41 through 44 as being obvious over the admitted prior art in view of Ooms.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED-IN-PART


JOHN D. SMITH
Administrative Patent Judge)
)
)

BRADLEY R. GARRIS
Administrative Patent Judge)
)
)

TERRY J. OWENS
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Appeal No. 94-0403
Application 07/611,997

Z. Peter Sawicki
Ste. 1500, 625 Fourth Ave. South
Minneapolis, MN 55415

CLAIMS 7, 32, 36, 39 and 41

7. A tape applying machine comprising:
- a carriage;
 - a plurality of ground engaging legs fixedly attached to the carriage for retaining the carriage above the ground;
 - a lower taping head disposed within the carriage for applying tape to boxes traveling across a top surface of the carriage;
 - a bridge structure fixedly attached to the carriage and being disposed above the carriage and including mounting means for mounting an upper taping head, the mounting means including first and second spaced apart panels defining a taping head receiving opening, each panel having a pair of spaced apart J-configured slots, each slot having two sections, both sections having a component extending in a vertical direction, one of the two sections having an open end;
 - an upper taping head positioned within the mounting assembly of the bridge structure for applying tape to the top of boxes being transported across the carriage; and
 - first and second pairs of pin members extending outwardly from first and second opposing sides of the upper taping head, the pin members being disposed to engage the J-configured slots.

32. A tape applying machine comprising:
a carriage;
a plurality of ground engaging legs fixedly attached to the carriage for retaining the carriage above the ground;
a taping head disposed within the carriage for applying tape to boxes traveling across a top surface of the carriage; and
a tape supply roll holder having a bracket portion and an arm portion, the arm portion being attached to the bracket portion, the bracket being fixedly attached to the carriage at a lower position thereof, and the arm portion having a distal end being disposed at a position away from the carriage such that when a supply roll of tape is attached to the distal end, the supply roll is not underneath the carriage.
36. A tape applying machine comprising:
a carriage;
a plurality of ground engaging legs fixedly attached to the carriage for retaining the carriage above the ground;
a lower taping head disposed within the carriage for applying tape to boxes traveling across a top surface of the carriage;
a bridge structure fixedly attached to the carriage and being disposed above the carriage, wherein the bridge structure includes a vertically adjustable portion being adjustable to the height of the boxes being transported across the carriage;

an upper taping head positioned within the bridge structure for applying tape to the top of boxes being transported across the carriage;

a pneumatic circuit having regulating means for regulating pneumatic pressure and cylinder means operably connected to the bridge for adjusting the vertical position of the bridge and being in fluid connection with the regulator means such that pneumatic fluid is regulated to the cylinder means, and switch means for actuating the cylinders to adjust the cylinders to the height of boxes being transported across the carriage; and

a mechanical stop within the bridge for retaining the bridge in a raised position when the pneumatic circuit is in a non-operable state.

39. A tape applying machine comprising:
- a carriage;
 - a plurality of ground engaging legs fixedly attached to the carriage for retaining the carriage above the ground;
 - a lower tape applying head being disposed within the carriage for applying tape to boxes traveling across the carriage;
 - a bridge fixedly attached to the carriage and having an upper portion adjustable to the height of boxes traveling across the carriage;

an upper tape applying head disposed within the bridge structure
for applying tape to the top of boxes traveling across the
carriage;
drive belt means providing a mode of force for transporting the
boxes that travel across the carriage; and
emergency stop switch means positioned on an upper surface of
the bridge structure being actuable by an operator from
either side of the machine.

41. A tape applying machine for applying tape to boxes having at least
upper portions with flap members that require sealing, the flap members having
edge portions, the machine comprising:

a carriage;
a plurality of ground engaging legs fixedly attached to the
carriage for retaining the carriage above the ground;
a lower tape applying head being disposed within the carriage for
applying tape to boxes traveling across the carriage;
a bridge fixedly attached to the carriage and having an upper
portion adjustable to the height of the boxes traveling
across the carriage;
an upper tape applying head attached to the bridge structure for
applying tape to the edge portions of the upper flap
members of the boxes traveling across the carriage; and

first compression roller means disposed to engage a first upper portion of the box as the box travels across the carriage and a second compression roller means for engaging a second upper portion of the box opposite from the first upper portion of the box as the box travels across the carriage, each compression roller means including first and second spaced apart, each roller engaging the upper portion of the respective side of the box such that the edge portions of the flaps are substantially parallel when the tape is applied by the upper tape applying head.